COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services.	)	D.T.E. 01-34

HEARING OFFICER RULING ON MOTIONS FOR CONFIDENTIAL TREATMENT AND MOTIONS FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

November 7, 2002

I. INTRODUCTION

The Department of Telecommunications and Energy ("Department") has received a number of Motions for Confidential Treatment from Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"), AT&T Communications of New England, Inc. ("AT&T"), and WorldCom Inc. ("WorldCom") in the above-captioned proceeding. No party filed responsive comments on the Motions for Confidential Treatment. This Hearing Officer ruling addresses those motions.

The Department has received the following Motions for Confidential Treatment from Verizon:

June 1, 2001	Attachment 3 to Verizon's May 24, 2001 Special Access Report (Exh. VZ-MA-1)
December 24, 2001	attachment to Verizon response to information request DTE-VZ-3-13 (Exh. DTE-VZ-3-13)
March 6, 2002	attachment to Verizon response to information request WCOM/ATT-VZ-4-18
April 9, 2002	attachment to Verizon response to information requests WCOM-VZ-1-1 (Exh. WCOM-VZ-1-1) and WCOM-VZ-1-2
May 23, 2002	attachments to Verizon response to information requests DTE-VZ-5-21 (Exh. DTE-VZ-5-21) and DTE-VZ-5-22

The Department received the following Motions for Protective Treatment of Confidential Information from AT&T:

March 26, 2002	attachment to AT&T response to information request VZ-ATT-2-1 (Exh. VZ-ATT-2-1)

May 21, 2002	AT&T response to information request DTE-ATT–1-1 (Exh. DTE-ATT–1-1); attachments to AT&T response to information requests DTE-ATT-1-4 and DTE-ATT-1-10 (Exh. DTE-ATT-1-10)

The Department received the following Motions for Protective Treatment of Confidential Information from WorldCom:

April 2, 2002	attachments to WorldCom's response to information requests VZ-WCOM-2-2 and VZ-WCOM-2-3 (Exhs.VZ-WCOM-2-2 and VZ-WCOM-2-3)
May 22, 2002	attachment to WorldCom's response to information request DTE-WCOM-1-4 (Exh. DTE-WCOM-1-4)

II. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

> The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information;" second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-

disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer"); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not and will not be granted automatically by the Department. A party's willingness to enter into a non-disclosure agreement with other parties does not resolve the question of whether the response, once it becomes a public record in one of our proceedings, should be granted protective treatment. In short, what parties may agree to share and the terms of that sharing are not dispositive of the Department's scope of action under G.L. c. 25, § 5D, or c. 66, § 10. See Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

III. DESCRIPTIONS OF THE REQUESTS

A. Verizon's Requests

In its June 1, 2001 Motion for Confidential Treatment, Verizon requests confidential treatment for Attachment 3 to its May 24, 2002 Special Access Report, which identifies special access orders completed for named customers in 2000 and first quarter 2001. Verizon argues that it is not at liberty to disclose this customer-specific data without the express written permission of the parties involved (June 1, 2001 Motion at 3). Furthermore, Verizon argues that failure to treat the customer-specific data as confidential would infringe on third parties' rights and their reasonable expectation that this information would not be made public (id.).

In its December 24, 2001 Motion for Confidential Treatment, Verizon requests confidential treatment for the attachment to its response to information request DTE-VZ-3-13,

which contains Verizon's internal methods and procedures for implementing jeopardy and missed function codes in the provisioning process in the Verizon region (December 24, 2001 Motion at 2). According to Verizon, this material constitutes a blueprint of Verizon internal business practices, and describes the Company's technical systems, mechanized processes and administrative practices in a level of detail that is not known outside Verizon (id. at 2-3). Verizon argues that if this information is made public, then Verizon's competitors could gain an unfair business advantage by using the data to develop their practices or for other purposes (id. at 3). Verizon points to two recent Department proceedings where a comparable type of information was deemed confidential by the Department, and urges the Department to reach the same conclusion here (id.).

In its March 6, 2002 Motion for Confidential Treatment, Verizon requests confidential treatment for the attachment to its response to information request WCOM/ATT-4-18, which contains the number of orders for special access services attributable to Verizon Advanced Data Services ("VADI"), the former separate data affiliate of Verizon. Verizon argues that this information is customer-specific data that would be of significant business and marketing value to potential competitors, and that the data cannot be reasonably duplicated or readily obtained from non-Company sources (March 6, 2002 Motion at 3). According to Verizon, information regarding VADI's customer base could assist competitors in developing their marketing efforts and competitive initiatives for special access services in Massachusetts (id.). Verizon contends that comparable information has not been provided in this proceeding on a carrier-specific basis regarding other carrier and end-user customers (id.).

In its April 9, 2002 Motion for Confidential Treatment, Verizon requests confidential treatment for an attachment to its responses to information requests WCOM-VZ-1-1 and WCOM-VZ-1-2 (the same attachment for both responses), which contains information regarding orders placed for a specific carrier and a specific end-user customer. Verizon argues that such customer-specific information should be protected because it could provide significant business and marketing information to potential competitors, and that the data cannot be reasonably duplicated or readily obtained from non-Company sources (April 9, 2002 Motion at 3). Verizon contends that failure to treat the customer-specific data as confidential would infringe on third parties' rights and their reasonable expectation that this information would not be made public (id.). Verizon states that confidential treatment of this information is consistent with treatment of other carrier or end-user customer-specific data in this and other proceedings (id.).

In its May 23, 2002 Motion for Confidential Treatment, Verizon requests confidential treatment for an attachment to its response to information request DTE-VZ-5-21, and an attachment to its response to information request DTE-VZ-5-22. According to Verizon, its response to information request DTE-VZ-5-21 contains information filed with the Federal Communications Commission ("FCC") relating to Verizon's Petition for Pricing Flexibility for

special access and dedicated transport services in Massachusetts, specifically, (1) data showing the identity of special service providers and where they have collocated their facilities in Verizon wire centers, and (2) data on Verizon's special access and dedicated transport revenues in certain study areas (May 23, 2002 Motion at 3). Verizon states that the FCC previously declared the information confidential, and, because the Department's standard of review for confidential treatment is comparable to the FCC standard, there is no basis for the Department to treat this information differently than the FCC (id. at 3-4). In addition, Verizon identifies the attachment to its response to information request DTE-VZ-5-22 as the Massachusetts Competitive Profile, that contains a collection of information detailing competitive activity in each Verizon central office in Massachusetts (id. at 4). Verizon states that the Department granted confidential treatment to this information in D.T.E. 01-31, and that the Department should reach the same result in this proceeding (id.).

B. AT&T's Requests

In its March 26, 2002 Motion for Protective Treatment of Confidential Information, AT&T requests confidential treatment for an attachment to its response to information request VZ-ATT-2-1, which contains information on how AT&T provisions special access circuits for its customers. AT&T states that the information provides percentages of customers that AT&T serves with its own facilities, with facilities leased from other carriers, and with facilities leased from Verizon (March 26, 2002 Motion at 3). According to AT&T, this information is not readily available to competitors, and sheds light on AT&T's internal decision making processes and its marketing and entry strategy (id.). AT&T argues that competitors could use this information to influence customer perceptions about the level of service AT&T provides because customers perceive that AT&T's level of service depends on the facilities used to provide service (id.). AT&T contends that customers differentiate carriers on the basis of the extent to which carriers use their own network facilities as opposed to leased facilities (id.).

In its May 21, 2002 Motion for Protective Treatment of Confidential Information, AT&T requests confidential treatment of its response to information request DTE-ATT-1-1, and attachments to its response to information requests DTE-ATT-1-4 and DTE-ATT-1-10. AT&T's response to information request DTE-ATT-1-1 contains the negotiated standard intervals which competitive local exchange carriers ("CLECs") have agreed to provide AT&T for the provisioning of special access circuits. AT&T argues that competitors could use this information to develop sales strategies for offering services that compete with AT&T services (May 21, 2002 Motion at 5).

The attachments to AT&T's response to information request DTE-ATT-1-4 contain performance data and pricing for special access services. Attachment A includes internal AT&T data on Verizon's performance in provisioning special access circuits to AT&T, data which AT&T states that it developed internally and is not publicly available (id. at 3). AT&T

argues that the data is specific to AT&T, and resembles carrier-specific performance data protected in the Carrier-to-Carrier and Performance Assurance Plan reports (id.). AT&T contends that competitors could unfairly use the information to their advantage by advertising that they receive better provisioning and maintenance performance from Verizon than does AT&T (id.). Attachments B-1 and B-2 provide the prices that AT&T pays to Verizon-North, Verizon-South, and other incumbent local exchange carriers ("ILECs") for special access circuits. AT&T argues that this pricing information is the type that the Department has previously recognized as proprietary, and that the information is not publicly available (id. at 4). According to AT&T, competitors could use this information to unfair advantage by comparing their discounts to the discounts received by AT&T (id.). The attachment to AT&T's response to information request DTE-ATT-1-10 provides the number of Verizon DS1 and DS3 circuits AT&T commits to use each month over a period of years. AT&T argues that because these forecasts inform competitors about AT&T's projected use of leased facilities from Verizon to serve AT&T customers, they provide insight into AT&T's internal decision making processes and its marketing and entry strategy, and could assist competitors to target particular market segments (id. at 5-6). AT&T compares this information with access line forecasts protected in D.T.E. 01-20, and provisioning percentages for which it asks protection above (id.). AT&T reiterates its argument that competitors can use this information to influence customer perceptions of the level of service provided by AT&T (id.).

C. WorldCom's Requests

In its April 2, 2002 Motion for Protective Treatment of Confidential Information, WorldCom requests confidential treatment of attachments to its responses to information requests VZ-WCOM-2-2 and VZ-WCOM-2-3. The attachment to VZ-WCOM-2-2 contains the number of buildings in Massachusetts in which WorldCom has off-net connectivity via Verizon and via other carriers. WorldCom argues that this information is not known outside WorldCom and is used for WorldCom internal purposes (April 2, 2002 Motion at 2). In addition, WorldCom contends that this information could provide competitors with an unfair competitive advantage by influencing the perceptions of would-be customers, and providing insight into the extent to which WorldCom has penetrated the market to date (id. at 3). The attachment to VZ-WCOM-2-3 identifies specific circuits purchased by WorldCom from Verizon, including circuit identification numbers and billing account numbers. WorldCom argues that this information should be protected because it reveals the number of intrastate circuits WorldCom purchases from Verizon and therefore WorldCom's intrastate special access market penetration (id.). WorldCom also contends that revealing circuit identification numbers and billing account numbers could expose the Company to service-affecting or fraudulent conduct (id. at 4). WorldCom further argues that the attachments to both information requests contain carrier-specific data of the type previously protected by the Department (id.).

In its May 22, 2002 Motion for Protective Treatment of Confidential Information,

WorldCom requests confidential treatment of an attachment to its response to information request DTE-WCOM-1-4, which contains a comparison of the provisioning performance for DS1s from Verizon and from an unnamed CLEC, including the number of circuits provided and average installation intervals of each carrier. WorldCom argues that the information is not known outside of WorldCom and should be kept confidential (May 22, 2002 Motion at 2). According to WorldCom, this carrier-specific information of provisioning intervals and market penetration could be used by competitors to gain unfair advantages by influencing perceptions of would-be customers (id. at 3). WorldCom further argues that the Department has protected similar carrier-specific information in the past, specifically monthly carrier-specific performance reporting under the Consolidated Arbitrations, and the Carrier-to-Carrier Guidelines and Performance Assurance Plan (id.).

IV. ANALYSIS AND FINDINGS

A. Customer-specific and carrier-specific information

Regarding the information that identifies customer-specific or carrier-specific data, the Department has granted confidential treatment for this type of information in the past. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 - Phase 4-Q at 17-18 (2000) (customer-specific information); Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Hearing Officer Ruling on Bell Atlantic Motion for Protective Treatment of Performance Standards Reports (October 21, 1999) (carrier-specific information); Tariff Nos. 14 and 17, D.T.E. 98-57, Hearing Officer Ruling on Motion for Confidential Treatment by Bell-Atlantic Massachusetts (November 5, 1999) (carrier-specific information). The Hearing Officer has reviewed the parties' requests, and finds that the customer-specific and carrier-specific information in the responses below is the type of information that may be protected under the requirements of §5D. Therefore, the Hearing Officer grants confidential treatment to those information requests containing customer-specific or carrier-specific information: Attachment 3 to Verizon's May 24, 2001 Special Access Report (Exh. VZ-MA-1); attachment to Verizon response to information request WCOM/ATT-VZ-4-18; attachment to Verizon response to information requests WCOM-VZ-1-1 (Exh. WCOM-VZ-1-1) and WCOM-VZ-1-2; attachments to WorldCom's response to information request VZ-WCOM-2-3 (Exh.VZ-WCOM-2-3).

B. Information protected in other proceedings

Regarding the information protected in another Department proceeding, the Hearing Officer notes that the information in Verizon's response to information request DTE-VZ-5-22, containing the Massachusetts Competitive Profile, was granted protective treatment in Alternative Regulatory Plan, D.T.E. 01-31 - Phase I, Hearing Officer Ruling on Motion of AT&T Communications of New England, Inc. For Protective Treatment of Confidential

Information, and Motion by Verizon Massachusetts for Confidential Treatment (November 30, 2001). This Hearing Officer agrees with the reasoning cited there and grants confidential treatment to the Massachusetts Competitive Profile (DTE-VZ-5-22) in this proceeding. In addition, the attachment to AT&T's response to information request VZ-ATT-2-1, Testimony of Anthony Fea, identifies the percentages of AT&T business customers served by AT&T facilities, and the percentage of business customers served by facilities of other carriers. The Department granted confidential treatment to this information in D.T.E. 01-31. Alternative Regulatory Plan, D.T.E. 01-31 - Phase I (2002). Consistent with the Department's recent treatment of this information, the Hearing Officer grants AT&T's March 26, 2002 Motion.

Regarding the information protected in another jurisdiction, the Department must follow the requirements of § 5D, and not the confidentiality rules of another jurisdiction, in this case the FCC. Although Verizon argues that "the Department's standard of review is comparable to the FCC process," Verizon requests confidential treatment under the Massachusetts statute, and that is the correct standard to be applied. Verizon's response to information request DTE-VZ-5-21 identifies collocated special access providers in each wire center, and as such is carrier-specific information that warrants confidential treatment under the analysis in Section IV.A., above. In addition, DTE-VZ-5-21 identifies revenues for special access and dedicated transport, services that the FCC found were sufficiently competitive to warrant a certain level of pricing flexibility. The Hearing Officer finds that making this information public could result in competitive harm to Verizon, and therefore grants Verizon's request to keep the revenue data confidential.

C. Internal Methods and Procedures

Verizon response to information request DTE-VZ-3-13, contains the Company's methods and procedures ("M&P") for jeopardy codes and missed function codes. The document explains the reason for changing Verizon's policy regarding jeopardy codes and missed function codes, the impact on its computer systems of the change, how an agent posts these codes, the valid missed function codes and reason codes, and a definitional section. According to Verizon, this material constitutes a blueprint of Verizon internal business practices, and describes the Company's technical systems, mechanized processes and administrative practices in detail. However, it is unclear how the information contained in DTE-VZ-3-13 could be used by competitors in a manner to unfairly disadvantage Verizon. The information on the impact on Verizon's systems of the M&P change is cursory, and the information on the key strokes required to enter these two codes into the correct fields on Verizon's particular system does not reveal considerable information about Verizon's internal operating systems. The missed function and reason codes appear in other public Verizon documents (e.g., Exh. DTE-VZ-4-27). Finally, the definitions in this document simply identify organizations within Verizon responsible for different elements of the provisioning process. None of this information rises to the level that it "consists of a blueprint of internal business

practices." The Hearing Officer finds that Verizon has not met its burden to prove why the information in the Company's response to DTE-VZ-3-13 warrants confidential treatment under §5D, and therefore denies Verizon's December 24, 2001 Motion.

D. Network Configuration

Regarding WorldCom's request to protect the attachment to its response to information request VZ-WCOM-2-2, that response identifies the number of buildings in which WorldCom has off-net connectivity. WorldCom makes a similar argument to that of AT&T in its request to protect its on-net and off-net data (VZ-ATT-2-1), mainly that competitors could use this information to influence customer perceptions. WorldCom further argues that the data reveals market penetration. For the reasons cited by the Department in its D.T.E. 01-31 Order above, that this information could be used by a competitor as a marketing tool to gain unfair competitive advantage, the Hearing Officer grants WorldCom's Motion to protect the attachment to its response to information request VZ-WCOM-2-2.

E. Performance, Order Volume, and Pricing Information

Two AT&T responses (DTE-ATT-1-1, and attachment A to DTE-ATT-1-4) and one WorldCom response (attachment to DTE-WCOM-1-4) contain provisioning intervals and performance information. Attachment A to DTE-ATT-1-4 and attachment to DTE-WCOM-1-4 show Verizon's provisioning performance to AT&T and WorldCom respectively, and compare that performance to other ILECs and to "CLEC X." AT&T's response to DTE-ATT-1-1 indicates standard provisioning intervals that CLECs have committed to provide AT&T. Both AT&T and WorldCom argue that competitors could unfairly use this type of information by advertizing that they receive better provisioning intervals. Both AT&T and WorldCom have argued repeatedly during this proceeding that the speed at which they can respond to end-user orders is a key factor in their customers' decision-making process. Because the vast majority of orders are filled with circuits provided by others, the intervals committed to or received by those suppliers becomes important, if not determinative. This information could be a powerful tool in the hands of a competitor. The Hearing Officer finds that the provisioning intervals and performance information falls within the type of information that may be protected under §5D, and therefore grants confidential treatment to AT&T's response to DTE-ATT-1-1, and attachment A to DTE-ATT-1-4, and WorldCom's response in the attachment to DTE-WCOM-1-4.

In its response to DTE-ATT-1-10, AT&T identifies the volume commitments it has made to Verizon North. This information is analogous to forecast data that the Department has protected in the past. See TELRIC Proceeding, D.T.E. 01-20, Hearing Officers' Ruling on Motions for Confidential Treatment by Verizon New England Inc. d/b/a Verizon Massachusetts, at 10 (December 21, 2001). This information could be used by competitors to

identify AT&T's marketing plans and entry strategy, and to target particular market segments. The Hearing Officer finds that this forecasting information is the type that may be protected under §5D, and therefore grants confidential treatment to AT&T's response in its attachment to DTE-ATT-1-10.

Finally, Attachments B to AT&T's response to information request DTE-ATT-1-4 contain the prices that AT&T has negotiated with Verizon and some other ILECs for special access circuits. The Department has protected supplier pricing information in the past. See Colonial Gas Company, D.P.U. 96-18 (1996) (protecting gas cost and pricing information); Electric Contracts, D.P.U. 96-39 (1996) (protecting electricity contract price terms). Public disclosure of this pricing information could compromise AT&T's ability to negotiate competitive prices in the future. The Hearing Officer finds that this supplier pricing information is the type that may be protected under §5D, and therefore grants confidential treatment to AT&T's response in its Attachments B to DTE-ATT-1-4.

V. RULING

The Hearing Officer grants the parties' requests for confidential treatment for the following information request responses: Attachment 3 to Verizon's May 24, 2001 Special Access Report (Exh. VZ-MA-1); attachment to Verizon response to information request WCOM/ATT-VZ-4-18; attachment to Verizon response to information requests WCOM-VZ-1-1 (Exh. WCOM-VZ-1-1) and WCOM-VZ-1-2; attachments to Verizon response to information requests DTE-VZ-5-21 (Exh. DTE-VZ-5-21) and DTE-VZ-5-22; attachment to AT&T response to information request VZ-ATT-2-1 (Exh. VZ-ATT-2-1); AT&T response to information request DTE-ATT–1-1 (Exh. DTE-ATT–1-1); attachments to AT&T response to information requests DTE-ATT-1-4 and DTE-ATT-1-10 (Exh. DTE-ATT-1-10); attachments to WorldCom's response to information requests VZ-WCOM-2-2 and VZ-WCOM-2-3 (Exhs.VZ-WCOM-2-2 and VZ-WCOM-2-3); and attachment to WorldCom's response to information request DTE-WCOM-1-4 (Exh. DTE-WCOM-1-4). The Hearing Officer denies Verizon's request for confidential treatment of its attachment to the response to information request DTE-VZ-3-13 (Exh. DTE-VZ-3-13).

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by November 13, 2002. A copy of this Ruling must accompany any appeal. Responses to any appeal must be filed by November 15, 2002.

November 7, 2002 _____/s/_____
Date Joan Foster Evans
Hearing Officer

cc: Mary L. Cottrell, Secretary
Paul G. Afonso, General Counsel
William Agee, Assistant General Counsel
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Service List